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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.24602 OF 2017

AND

W.M.P.NO.25959 OF 2017

K.V.Rajan

... Petitioner

.Vs.

1. The Commissioner,
The Hindu Religious & Charitable
Endowments Department,
Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.
2. The Joint Commissioner of HR & CE,
O/o. The Joint Commissioner,
The Hindu Religious & Charitable
Endowments Department,
Salem.
3. The Assistant Commissioner,
The Hindu Religious & Charitable
Endowments Department,
Salem - 636 001.
4. The Fit Person/Assistant Commissioner
of HR & CE,
The Arulmigu Prasanna Venkatajalapathy
Mariamman Temple,
Shevapet, Salem - 632 002.
5. The Executive Officer,
The Arulmighu Prasanna Venkatajalapathy
Mariamman Temple,
Shevapet, Salem - 636 002.

... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the



3rd respondent in Na.Ka.No.3285/2017/Aa1 dated 21.08.2017 and quash the same, consequentially issued direction directing the respondents 3 to 5 to handover the possession of property situated in T.S.No.210, 212, 214 to an extent of 8000 sq.ft. of vehicle shed situated at Muniappan Koil Street, Salem and direct to follow due process of law.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : Mr.NRR.Arun Natarajan
Special Government Advocate
(For R1 to R4)

O R D E R

The prayer sought for herein is for a writ of certiorarified mandamus calling for the records pertaining to the order passed by the 3rd respondent in Na.Ka.No.3285/2017/Aa1 dated 21.08.2017 and quash the same, consequentially issue direction directing the respondents 3 to 5 to handover the possession of property situated in T.S.No.210, 212, 214 to an extent of 8000 sq.ft. of vehicle shed situated at Muniappan Koil Street, Salem and direct to follow due process of law.

2. The landed property to the extent of 8000 sq.ft. situated in Muniappan Koil Street, Salem in T.S.No.210, 212 & 214 belongs to the 4th and 5th respondents Temple (in short to be called as 'Temple'). The said property for the purpose of giving the leasehold right to collect toll from the persons who stationed the cycle, in other words, called as 'cycle stand', the Temple authorities brought the said property for auction to create a third party right by way of lease.

3. Accordingly, the petitioner since become a successful bidder for the year 2010 i.e. from 01.01.2010 to 31.12.2010, lease was executed in favour of the petitioner to have the one year leasehold right for collecting the toll in the said cycle stand.

4. According to Clause 16 of the Tender Conditions, the leasehold right for collection is only for one year and after the completion of one year, it would get automatically lapsed and the property in question shall automatically be revert back to the Temple.



5. Though the one year lease period was over, subsequently the petitioner continued in possession of the same, thereby his continued possession was treated by the Temple as an encroachment and accordingly, the Temple demanded amount from the petitioner for use and damages.

6. In this regard, according to the petitioner, a sum of Rs.4,05,317/- was paid on 17.05.2017 and in this regard, a miscellaneous receipt given by the Temple has been filed in the typed set of documents wherein it has been recorded that, a sum of Rs.4,05,317/- was received from the petitioner towards use and damages of the property concerned and accordingly, the possession has been handed over to the Temple.

7. Subsequently, litigation was made by the petitioner by filing a writ petition in W.P.No.16936 of 2017 seeking for a direction to unlock the leased out premises and to give or handover the possession of the property towards the petitioner, where, the learned Judge of this Court, by order dated 05.07.2012, directed that the petitioner's representation in this regard dated 29.05.2017 can be considered and disposed of by the respondents.

8. Pursuant to which, the representation given in this regard by the petitioner having been considered was rejected through the order dated 21.08.2017 by the 3rd respondent, under which, the claim of the petitioner to handover the property to the petitioner and to extend the lease period further has been turned out. Aggrieved over the same, the present writ petition has been filed with the aforesaid prayer.

9. Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioner would submit that, insofar as the lease period is concerned, no doubt, it was over by 31.12.2010 and as per Clause 16 of the Tender Conditions, the lease period was over by 31.12.2010, still the petitioner was continuing in the leased out property with the knowledge of the respondents and therefore, if at all any action to be taken against the petitioner either to bring the property for further public auction or to vacate the petitioner or remove the petitioner from the possession forcibly, the procedure as contemplated under Section 78 as well as 79 of the H.R. & C.E. Act should have been followed. However, admittedly, no such proceedings have been issued and the said procedure has not been followed.



10. Without following the procedure established in those provisions of the H.R. & C.E. Act, since the respondent Temple or the H.R. & C.E. Department have sealed the premises of the petitioner i.e., the property in question, in order to desal premises, when this petitioner approached this Court by filing the writ petition, direction was given by this Court to consider the request of the petitioner in this regard and accordingly, request has been made to desal the premises and to renew the lease atleast for a further period of one year.

11. However, without considering the said representation in proper perspective and also without exhausting the procedure contemplated under Sections 78 and 79 of the H.R. & C.E. Act unilaterally, since the order has been passed dated 21.08.2017 rejecting the said request of the petitioner through the impugned order, the said order is unjustifiable and unsustainable, therefore, it is liable to be interfered with. As a sequel, the petitioner's property to be desealed and handed over possession to the petitioner and thereafter, whatever action the respondents want to take in accordance with the provisions of the H.R. & C.E. Act, especially under Sections 78 and 79 of the Act can be taken. Therefore, the learned counsel appearing for the petitioner would contend that, the present impugned order shall not stand in the legal scrutiny, hence, it is liable to be quashed and consequently, direct the respondent Temple to handover the possession of the property to the petitioner for the time being.

12. Per contra, Mr.NRR.Arun Natarajan, learned Special Government Pleader appearing for the respondent Department as well as the Temple would submit that, insofar as the lease period is concerned, it is admittedly came to an end by 31.12.2010 and thereafter, the property automatically revert back to the Temple concerned, by virtue of Clause 16 of the Tender Conditions. Therefore, beyond 31.12.2010 if at all the petitioner claimed to have been in continuous possession of the property concerned i.e., an illegal possession or encroachment and in that case, the petitioner cannot seek any extension of lease because such kind of extension of lease cannot be automatically given as the lot of the Temple properties has to be leased out only by way of public auction to create any third party right where it is open to the petitioner to participate the auction and here in the case in hand, since the petitioner has made a representation to recognise him as the only lessee for the continuous period after the lease period over, the same has been now rejected through the impugned order.



13. The learned Special Government Pleader would further submit that, though specifically no orders under Sections 78 and 79 of the H.R. & C.E. Act have been passed, that will not ipso facto give any leverage to the petitioner to claim right over the property as a lawful lessee in the Temple and therefore, admittedly since he being an encroacher, he has no right to seek for extension of lease. Therefore, the rejection made through the impugned order is in consonance with the provisions of the H.R. & C.E. Act as well as the lease conditions, hence, such order would be sustainable and it does not require any interference from this Court, he contended.

14. He also submits that, even for use and damages though some amount has been paid by the petitioner sometime in 2017 and still some more amount is due in the same heading which should be recovered from the petitioner, for which, the respondent H.R. & C.E. Department and the Temple reserved their right to proceed separately.

15. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

16. Though the lease period was over by 31.12.2010 and as per the Condition No.16, the lease period would be expired by the end of one year and the next day it would automatically revert back to the Temple, the admitted fact is that the petitioner continued for some years in the said property, for which, charges for use and damages had been collected from him in the year 2017.

17. But mere collection of any amount for use and damages would not give any right or confer any right on the petitioner to seek extension of lease as an automatic right.

18. But at the same time, as has been rightly pointed out by the learned counsel for the petitioner, if at all the petitioner is to be treated as an encroacher, how the encroacher should be removed has been contemplated under the provisions of the H.R. & C.E. Act, especially under Section 78 followed by Section 79.

19. Here in the case in hand, admittedly, no such proceedings had been issued by invoking Section 78 declaring the petitioner as an encroacher and given the 15 days time or



whatever the time to be fixed in this regard by the Temple or Executive Officer concerned to vacate the premises voluntarily by the petitioner and if any such proceedings issued within the time stipulated, the petitioner has not come forward to vacate the premises, then, it is open to the respondents to invoke Section 79 to evict him forcibly with the help of the Police. When such a procedure is available in the H.R. & C.E. Act, without exhausting such procedure, as contemplated under Sections 78 and 79 of the H.R. & C.E. Act, since so far the respondents have not passed any proceedings, the argument advanced by the learned counsel in this regard has to be accepted technically. Therefore, this Court feels that, this Writ Petition can be disposed of, considering the facts and circumstances of the case, with the following directions:

(i) That the impugned order is liable to be quashed, accordingly, it is quashed.

(ii) The matter is remitted back to the respondents. While reconsidering, it is open to the respondents to invoke Section 78 to declare the petitioner as an encroacher wherein a time can be fixed by the respondents to the petitioner to voluntarily vacate the premises, if he has not come forward to voluntarily vacate within the time to be stipulated in this regard, it is open to the respondents to invoke Section 79 of the Act to evict him forcibly with the help of the Police.

(iii) The aforesaid action can be taken by the respondents against the petitioner within the maximum period of two months from the date of receipt of a copy of this order. Till such time, if the petitioner is put in possession pursuant to the quashment of the impugned order as well as the direction indicated above, that possession of the petitioner would not automatically confer any right on him to raise any ground against the respondent H.R. & C.E. Department to claim right over the property either as a lessee or a person seeking extension of lease. It is further made clear that, insofar as the arrears of the payment if any to be made for the use and damages for such property, during these years i.e. beyond 31.12.2010 till the premises was sealed, it is open to the Department to initiate separate proceedings to recover the same in the manner known to law.



(iv) As a sequel, the sealing of the premises shall be undone by desealing the premises and handover the possession to the petitioner.

(v) It is made clear that, during the short period of two months i.e. before he himself voluntarily vacated the premises or he is vacated by forcible eviction by the respondents invoking Section 79 of the Act, the petitioner shall not make any material alteration in the property concerned.

20. With these directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Commissioner,
The Hindu Religious & Charitable
Endowments Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.
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O/o. The Joint Commissioner,
The Hindu Religious & Charitable
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5. The Executive Officer,
The Arulmighu Prasanna Venkatajalapathy
Mariamman Temple,
Shevapet, Salem - 636 002.

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+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.62117
+1cc to the Government Pleader, S.R.No.62411

W.P.NO.24602 OF 2017

RK(CO)
PBS/15/02/2022